

AN 09/921,008
Page 13

REMARKS

Claims 18, 19 and 28-70 were pending and rejected by Examiner. Applicants have amended claims 18, 28, 35, 37, 44, 50, 57 and 67 and added new claims 71-77. No new matter has been added. In particular, support for claim amendments can be found in the original specification at least at Figures 6, 7, 8 and 9 and page 13, lines 3-7 and 19-23. Support for new claims can be additionally found at least at Figure 10. Applicants respectfully submit that claim 18-19 and 28-77 are in condition for allowance.

Claim Rejections-Double Patenting

Examiner rejected claims 18, 19, 50, 51, 55-57 and 62, under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claim 8 of the U.S. Patent No. 6,626,905 B1 (*Schmiel*) in view of *Michelson* (U.S. 5,772,661). Applicants submit that the claims, as amended, are allowable over the cited references. Regarding claims 18 and 19, a combination of claim 8 of *Schmiel* and *Michelson* does not include the requirement that "the longitudinal axis of the implant is at an angle of about 10° to about 45° from a sagittal plane of the patient", as recited in claim 18. Regarding claims 50, 51, 55-57 and 62, each of these claims, as amended, includes the feature that the distal edge of the guide be "adapted to rest against, and in substantial contact with, a posterior surface of a human vertebra". This feature does not result from any combination of claim 8 of *Schmiel* and *Michelson*. The double-patenting rejections should therefore be withdrawn.

Claims Rejections-Prior Art

Examiner rejected claims 28-33, 35, 36 and 67-70 under 35 U.S.C. § 102(b) as being anticipated by *Michelson*. Applicants submit that claims 28-33, 35, 36 and 67-70, as amended, are allowable. Each of these claims, as amended, includes the feature that the distal edge of the guide be "adapted to rest against, and in substantial contact with, a posterior surface of a human vertebra". This feature is not found in *Michelson*, which shows, especially in the portions that Examiner relied on, a guide tube intended for intervertebral procedures from a lateral approach. Claims 28-33, 35, 36 and 67-70 are therefore not anticipated by *Michelson*.

AN 09/921,008
Page 14

Examiner rejected claims 33, 34 and 36 under 35 U.S.C. § 103(a) as being unpatenable over *Michelson*. Applicants respectfully submit that these claims, as amended, are allowable over *Michelson*. Each of claims 33, 34 and 36, by itself or by its dependency on other claims, includes the feature that the distal edge of the guide be "adapted to rest against, and in substantial contact with, a posterior surface of a human vertebra". This feature is not taught nor suggested by *Michelson*. As discussed above, *Michelson* discloses a guide tube intended for intervertebral procedures from a lateral approach. There would have therefore been no motivation in the prior art to modify *Michelson* to arrive at a guide designed to engage a posterior surface of a vertebra. Claims 33, 34 and 36 are thus not obvious over *Michelson*.

Examiner further rejected claims 37-41 under 35 U.S.C. § 103(a) as being unpatenable over *Michelson* in view of *Mehdizadeh* (U.S. 6,030,390). Applicants respectfully submit that claims 37-41 are allowable. Each of claims 37-41, by itself or by its dependency on other claims, includes the feature that the distal edge of the guide be "adapted to rest against, and in substantial contact with, a posterior surface of a human vertebra". This feature is not taught nor suggested by either cited reference. A combination of *Michelson* and *Mehdizadeh*, whether or not proper, could not have resulted in this feature and thus not every element of the claim. Claims 37-41 are thus not obvious over *Michelson*. See, MPEP 2143.03.

Examiner further rejected claims 42-66 under 35 U.S.C. § 103(a) as being unpatenable over *Michelson* in view of *Mehdizadeh* (U.S. 6,030,390) and further in view of *Bryan* (U.S. 5,306,275). Applicants respectfully submit that claims 42-66 are allowable. Each of claims 42-66, by itself or by its dependency on other claims, includes the feature that the distal edge of the guide be "adapted to rest against, and in substantial contact with, a posterior surface of a human vertebra". This feature is not taught nor suggested by any of cited references. A combination of *Michelson*, *Mehdizadeh* and *Bryan*, whether or not proper, could not have resulted in this feature and thus not every element of the claim. Claims 42-66 are thus not obvious over *Michelson*. See, MPEP 2143.03.

AN 09/921,008
Page 15

Applicants therefore respectfully submit that rejections based on prior art have been overcome.

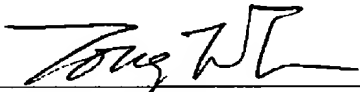
New Claims

Applicants have added new claims 71-77 and believe they are allowable.
Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully Submitted,

DANIEL G. SCHMIEL et al.

By:


Tong Wu, #43,361
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612/766-6804

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